

DEFENSE

Research and Development

Memorandum of Understanding Between the UNITED STATES OF AMERICA and OTHER GOVERNMENTS

Signed at San Diego, Rome, Hull, and
Madrid May 1, May 29, October 10, 2000,
and October 25, 2001

with

Annex

and

Agreement Amending the Memorandum of Understanding

Signed at Koblenz, The Hague, Washington, Lisbon,
Athens, Bergen, Brussels, Washington, Gatineau, Ankara,
Canberra, and Madrid May 8, May 28, June 20, June 24,
June 25, June 27, July 1, July 26, August 26, November 1,
December 10, 2013, and May 8, 2014



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“...the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MULTILATERAL

Defense: Research and Development

*Memorandum of understanding signed at
San Diego, Rome, Hull, and Madrid
May 1, May 29, October 10, 2000, and
and October 25, 2001;*

Entered into force October 25, 2001.

With annex.

*And agreement amending the memorandum of
understanding.*

*Signed at Koblenz, The Hague, Washington, Lisbon,
Athens, Bergen, Brussels, Washington, Gatineau,
Ankara, Canberra, and Madrid May 8, May 28,
June 20, June 24, June 25, June 27, July 1, July 26,
August 26, November 1, December 10, 2013, and
May 8, 2014;*

Entered into force May 8, 2014.

**MEMORANDUM OF UNDERSTANDING
FOR THE COOPERATIVE IN-SERVICE SUPPORT
OF THE EVOLVED SEASPARROW MISSILE**

"ESSM SUPPORT MOU"



**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE**

AMONGST

**THE MINISTER OF DEFENCE ON BEHALF OF THE DEPARTMENT OF DEFENCE OF
AUSTRALIA**

AND

THE MINISTER OF NATIONAL DEFENCE OF THE KINGDOM OF BELGIUM

AND

THE MINISTER OF NATIONAL DEFENCE OF CANADA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF DENMARK

AND

THE FEDERAL MINISTRY OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY

AND

THE MINISTER OF DEFENCE OF GREECE

AND

THE MINISTER OF DEFENCE OF ITALY

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF THE NETHERLANDS

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF NORWAY

AND

THE MINISTER OF DEFENSE OF PORTUGAL

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF SPAIN

AND

THE MINISTER OF DEFENCE OF TURKIYE

AND

**THE SECRETARY OF DEFENSE ON BEHALF OF THE DEPARTMENT OF DEFENSE OF THE
UNITED STATES OF AMERICA**

TABLE OF CONTENTS

	<u>PAGE</u>
PREAMBLE	1
SECTION 1 -- DEFINITIONS	2
SECTION 2 -- OBJECTIVES	5
SECTION 3 -- SCOPE OF WORK	6
SECTION 4 -- MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)	7
SECTION 5 -- FINANCIAL PROVISIONS	12
SECTION 6 -- CONTRACTUAL PROVISIONS	15
SECTION 7 -- WORK SHARING	17
SECTION 8 -- ESSM IN-SERVICE SUPPORT PHASE EQUIPMENT	18
SECTION 9 -- DISCLOSURE AND USE OF ESSM IN-SERVICE SUPPORT PHASE INFORMATION	19
SECTION 10 -- CONTROLLED UNCLASSIFIED INFORMATION	25
SECTION 11 -- VISITS TO ESTABLISHMENTS	26
SECTION 12 -- SECURITY	27
SECTION 13 -- CLAIMS AND LIABILITY	29
SECTION 14 -- ACCESSION	30
SECTION 15 -- THIRD PARTY SALES AND TRANSFERS	31
SECTION 16 -- CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES	33
SECTION 17 -- SETTLEMENT OF DISPUTES	34
SECTION 18 -- AMENDMENTS	35
SECTION 19 -- WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION	36
ANNEX A -- ESTIMATED MISSILE INVENTORY QUANTITIES	A-1

PREAMBLE

The Minister of Defence on behalf of the Department of Defence of Australia, the Minister of National Defence of Canada, the Minister of Defence of the Kingdom of Denmark, the Federal Ministry of Defense of the Federal Republic of Germany, the Minister of Defence of Greece, the Minister of Defence of the Kingdom of The Netherlands, the Minister of Defence of the Kingdom of Norway, the Minister of Defence of the Kingdom of Spain, the Minister of Defence of Turkiye, and the Secretary of Defense on behalf of the Department of Defense of the United States of America, hereinafter referred to as the "Contributing Participants," and the Minister of National Defence of the Kingdom of Belgium, the Minister of Defence of Italy, and the Minister of Defense of Portugal, hereinafter referred to as the "Non-contributing Participants" and collectively referred to as the "Participants"

Having a common interest in ship defense;

Recognizing the Memorandum of Understanding (MOU) for the International Development of the NATO SEASPARROW Surface Missile System dated 10 June 1968 and the Cooperative Support MOU for the NATO SEASPARROW Surface Missile System dated 1 December 1977;

Having entered into the Addendum to the Memorandum of Understanding for the Cooperative Support of the NATO SEASPARROW Surface Missile System dated 16 June 1995 and the Memorandum of Understanding for the Cooperative Production of the Evolved SEASPARROW Missile dated 26 December 1997;

Recognizing the benefits to be derived from the standardization, rationalization, interoperability of military equipment among the Participants' navies, the benefits to be obtained from cooperative programs, and the advantages to be gained from the use of their combined national capabilities in order to support systems and equipment operational in the Participants' navies in the most efficient and cost effective manner possible;

Recognizing that the Participants have a requirement for the in-service support of Evolved SEASPARROW Missile (ESSM) and ESSM-Related Elements;

Recognizing that this Memorandum of Understanding (MOU) covers the third segment of the ESSM Program and provides for the in-service support to the ESSM developed and produced under the earlier phases of the ESSM Program; and

Desiring to conduct the cooperative in-service support phase of the ESSM Program as a NATO Project;

Have reached the following understandings:

SECTION 1. DEFINITIONS

1.1 The following definitions apply for the capitalized terms in this MOU:

- 1.1.1 Addendum means the Addendum to the Memorandum of Understanding for the Cooperative Support of the NATO SEASPARROW Surface Missile System Concerning the Cooperative Engineering and Manufacturing Development of the Evolved SEASPARROW Missile dated 16 June 1995.
- 1.1.2 Advanced X-band Guidance Capability means a guidance mode of ESSM that provides midcourse guidance via X-band uplink and interrupted terminal illumination identified as Sample Data Homing (SDH).
- 1.1.3 Classified Information means official information that requires protection in the interests of national security and is so designated by the application of a security classification marking.
- 1.1.4 Contract means any mutually binding, legal relationship which obligates a Contractor to furnish supplies or services and obligates one or more Contributing Participants to pay for them.
- 1.1.5 Contracting means the obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
- 1.1.6 Contracting Agency means the entity, within the government organization of a Participant, which has authority to enter into, administer, and / or terminate Contracts.
- 1.1.7 Contracting Officer means a person, representing a Contracting Agency of a Participant, who has the authority to enter into, administer, and / or terminate Contracts.
- 1.1.8 Contractor means any entity awarded a Contract by a Participant's Contracting Agency.
- 1.1.9 Contributing Participant means those signatories to this MOU who are sharing in the costs associated with the ESSM In-service Support Phase.
- 1.1.10 Controlled Unclassified Information means unclassified information to which access or distribution limitations have been applied in accordance with this MOU

or national laws or regulations and which is released by one Participant to another subject to the condition that it be treated "IN CONFIDENCE."

- 1.1.11 Defense Purposes means the manufacture or other use in any part of the world by or for the armed forces of any Participant.
- 1.1.12 Designated Security Authority (DSA) means the security office approved by national authorities to be responsible for the security aspects of this MOU.
- 1.1.13 ESSM means an Evolved SEASPARROW Missile that meets the requirements specified in the ESSM Requirements Documents and Revisions thereto.
- 1.1.14 ESSM In-service Support Phase means that phase of the ESSM Program devoted to the post delivery cooperative life cycle support of ESSM as defined in Section 3 (Scope of Work) of this MOU.
- 1.1.15 ESSM In-service Support Phase Background Information means information not generated in the performance of the ESSM In-service Support Phase.
- 1.1.16 ESSM In-service Support Phase Equipment means any material, equipment, end item, subsystem, component, special tooling or test equipment provided under, jointly funded or cooperatively produced under this MOU.
- 1.1.17 ESSM In-service Support Phase Foreground Information means information generated in the performance of the ESSM In-service Support Phase.
- 1.1.18 ESSM In-service Support Phase Information means any information provided to, generated in or used in the ESSM In-service Support Phase regardless of form or type.
- 1.1.19 ESSM In-service Support Phase Invention means any invention or discovery formulated or made (conceived or "first actually reduced to practice") in the course of work performed under the ESSM In-service Support Phase. The term first actually reduced to practice means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
- 1.1.20 ESSM Program means an international, cooperative program for the development, production, and support of the ESSM.
- 1.1.21 ESSM-Related Elements means the equipment, documentation, and computer programs required to operate, store, and maintain the ESSM, including sections, components, interfaces, containers, related intermediate level maintenance tooling and test equipment, technical data, and computer programs.

- 1.1.22 National Costs means those costs for equipment, material, and / or services intended exclusively for the benefit of an individual Contributing Participant and solely funded by that Contributing Participant.
- 1.1.23 Non-contributing Participant means those signatories to this MOU who are not sharing the costs associated with the ESSM In-service Support Phase.
- 1.1.24 Participant means a Signatory to this MOU which includes both Contributing Participants and Non-contributing Participants (see Preamble).
- 1.1.25 Patent means legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents including, but not limited to, Patents of implementation, improvement, or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protection, as well as divisions, reissues, continuations, renewals, and extensions of any of these.
- 1.1.26 Project Security Instruction (PSI) means a description of the methods by which ESSM In-service Support Phase Information and material will be classified, marked, used, transmitted, and safeguarded.
- 1.1.27 Shared Costs means those costs jointly funded by the Contributing Participants.
- 1.1.28 Third Party means any person or other entity whose government or entity thereof is not a Participant.
- 1.1.29 United States (U.S.) Unique Items means those items which U.S. national disclosure policy prohibits dissemination of design and manufacturing data to the Participants. ESSM items in this category are the RIM-7P Guidance Section modified for ESSM, including all hardware, software, firmware within the modified guidance section; non-releasable guidance software resident in the transition section; AEGIS S-band uplink / down link module, S-band-associated software and firmware resident in the transition section; and the U.S. National Security Agency Cryptographic Device and associated interface design standards located in the Warhead Compatible Telemeter that, when deployed, is installed in the transition section.
- 1.1.30 X-band Participant means a Participant in this MOU that has contributed to the ESSM Engineering and Manufacturing Development (EMD) Phase and will utilize the Advanced X-band Guidance Capability.

SECTION 2. OBJECTIVES

- 2.1 The objectives of the Participants in the ESSM In-service Support Phase include:**
 - 2.1.1 Providing cost-effective in-service support for ESSM and ESSM-Related Elements.**
 - 2.1.2 Identifying and implementing changes that will maintain or improve the military effectiveness and/or readiness of ESSM.**
 - 2.1.3 Maintaining common configuration management of ESSM and ESSM-Related Elements.**
 - 2.1.4 Maintaining depot level maintenance facilities.**
 - 2.1.5 Sharing the work undertaken among the Contributing Participants.**
- 2.2 The Participants will preserve or enhance the overall effectiveness of the ESSM Advanced X-band Guidance Capability in future ESSM baselines, as determined by the NATO SEASPARROW Project Steering Committee (NSPSC) and as funded by the X-band Participants, upon fair and reasonable terms and conditions, as determined by the X-band Participants and by the United States Department of Defense (U.S. DoD), prior to the start of follow-on improvement activities.**

SECTION 3. SCOPE OF WORK

- 3.1 Cooperative in-service support of the ESSM and ESSM-Related Elements will include the following tasks:
- 3.1.1 Establish, operate, and maintain an inventory management system, including a comprehensive database for asset tracking, recertification control, configuration control, and missile stockpile-to-target history.
 - 3.1.2 Establish and maintain monitoring programs related to storage conditions, to validate recertification intervals, and to maintain inherent capabilities for both deep and temporary storage.
 - 3.1.3 Provide support to Intermediate Level Maintenance Facility (ILMF) operations, including such activities as configuration management, training, and certification of test equipment, and tools and handling equipment. Support will also include development and maintenance of procedures and processes for test and repair.
 - 3.1.4 Provide intermediate level inventory spares support for the procurement, storage, transportation, and replenishment of intermediate level maintenance items.
 - 3.1.5 Operate, and maintain depot level maintenance facilities, capabilities, and spare/repair part inventories.
 - 3.1.6 Provide technical assistance and advice for defining, designing, upgrading, and setting to work of physical facilities and organizations required to provide in-service support.
 - 3.1.7 Establish and operate in-service engineering and logistic analysis and monitoring programs to assess and document achieved capabilities and limitation and to undertake remedial efforts, if required, to retain inherent capabilities.
 - 3.1.8 Provide technical assistance and advice for operation, integration, employment, maintenance, safety, training, deinstallation, demilitarization, and disposal of ESSM and ESSM-Related Elements.
 - 3.1.9 Design, qualify, procure, and install product improvements that reduce life cycle costs, enhance military effectiveness, and improve operational and maintenance suitability.
 - 3.1.10 Provide configuration management of ESSM and ESSM-Related Elements.

SECTION 4. MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

- 4.1 For the benefit of the Participants, the ESSM In-service Support Phase will be directed by the NATO SEASPARROW Project Steering Committee (NSPSC) and administered by the NATO SEASPARROW Project Office (NSPO) headed by a Project Manager (NSPO PM).**
 - 4.1.1 These organizations were established by the Memorandum of Understanding for the International Development of the NATO SEASPARROW Surface Missile System dated 10 June 1968 (Development MOU), reestablished by the Memorandum of Understanding for the Cooperative Support of the NATO SEASPARROW Surface Missile System dated 1 December 1977 (Support MOU), utilized for the Engineering and Manufacturing Development (EMD) Phase of the ESSM Program as set forth in the Addendum, and given additional responsibility for the ESSM Production Phase by the Memorandum of Understanding for the Cooperative Production of the Evolved SEASPARROW Missile dated 26 December 1997.**
 - 4.1.2 This MOU assigns additional responsibilities to the NSPSC and the NSPO PM, who will perform these additional responsibilities on a cooperative basis in conjunction with their responsibilities under the cited Support MOU, its Addendum, and the ESSM Production MOU.**
- 4.2 Executive oversight of the ESSM In-service Support Phase will be exercised by the NSPSC. Each member of the NSPSC will be responsible for the necessary coordination with appropriate authorities of his own country. The NSPSC will oversee the ESSM In-service Support Phase in accordance with the principles and procedures set forth herein. Decisions on the following topics will be made by unanimous vote of the NSPSC.**
 - 4.2.1 Approval of the annual budget for ESSM In-service Support Phase Shared Costs and any revisions thereof.**
 - 4.2.2 Questions concerning the work share allocation among the Contributing Participants.**
 - 4.2.3 Questions concerning the allocation of costs between ESSM In-service Support Phase Shared Costs and National Costs.**
- 4.3 All other decisions related solely to the ESSM In-service Support Phase will be made by a majority vote of the NSPSC members, all votes being equally weighted. The chairman or the vice-chairman, in the absence of the chairman, will have one additional vote solely for the purpose of resolving any tied vote of the NSPSC. Any NSPSC member representing a Non-contributing Participant will not dissent to the wishes of all the representatives of Contributing Participants in the case of decisions requiring unanimous voting nor to the majority of the representatives of the Contributing Participants in the case of decisions**

requiring majority vote, unless the decision clearly interferes with or adds costs to programs under the cognizance of the NSPSC other than the ESSM Program.

- 4.4 In the event that the NSPSC is unable to reach a timely decision on an issue related to the ESSM In-service Support Phase, each member will, without delay, refer the issue to their appropriate national authorities for resolution. In the meantime, approved ESSM In-service Support Phase activities will continue to be implemented while the issue is being resolved by higher authorities.
- 4.5 The NSPSC responsibilities under this MOU include:
- 4.5.1 Carrying out the provisions of this MOU.
 - 4.5.2 Approving budgets and financial schedules prepared by the NSPO PM and reviewing the financial status of the ESSM In-service Support Phase to ensure compliance with the provisions of Section 5 (Financial Provisions).
 - 4.5.3 Reviewing and adjusting, if necessary, the quantities established in Table A-1 of Annex A (Estimated Missile Inventory Quantities) for FY 2005 and annually thereafter.
 - 4.5.4 Resolving issues brought forth by the NSPO PM.
 - 4.5.5 Determining the range and depth of ESSM In-service Support Phase Information to be released to Non-contributing Participants in accordance with Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), ensuring that Non-contributing Participants will be kept apprised of information regarding ESSM In-service Support Phase matters that might generate interference with other programs under cognizance of the NSPSC and changes in EMD and Production Phase documents, technical briefings, and summarized test results required for studies and planning of ESSM integration with NATO SEASPARROW systems.
 - 4.5.6 Approving acquisition strategies and identifying those acquisitions the NSPSC requires endorsement of prior to award.
 - 4.5.7 Reviewing and forwarding to the Participants for approval, recommended amendments to this MOU in accordance with Section 18 (Amendments).
 - 4.5.8 Reviewing and forwarding recommendations to the Contributing Participants concerning requests for Third Party sales or transfers in accordance with Section 15 (Third Party Sales and Transfers).
 - 4.5.9 Approving plans to manage and control the transfer of ESSM In-service Support Phase Equipment provided by any Participant to support the execution of the

ESSM In-service Support Phase in accordance with Section 8 (ESSM In-service Support Phase Equipment).

- 4.5.10 Approving plans for the disposal of jointly funded ESSM In-service Support Phase Equipment.
 - 4.5.11 Maintaining oversight of the security aspects of the ESSM In-service Support Phase, including reviewing and updating the EMD and Production Phase Project Security Instructions (PSI), as required, and obtaining approval from the appropriate Designated Security Authority of a PSI prior to the transfer of Classified Information.
 - 4.5.12 Upon request of a Non-contributing Participant, recommending provisions to all Participants for accession of the Non-contributing Participant to Contributing Participant status.
 - 4.5.13 Providing recommendations to the Participants for the addition of new Participants in accordance with Section 14 (Accession).
 - 4.5.14 Ensuring compliance with work share requirements as set forth in Section 7 (Work Sharing):
 - 4.5.15 Approving requests for development and production of test equipment, technical support and related services outside normal budgeted in-service requirements, as requested by Contributing Participants or the NSPO PM for conduct of the ESSM In-service Support Phase.
 - 4.5.16 Forwarding recommendations for levies and the procedures for assessing and distributing levies to the Contributing Participants in accordance with Section 15 (Third Party Sales and Transfers).
- 4.6 The NSPSC will have overall authority over the NSPO PM who will be designated by the U.S. The NSPO PM will have responsibility and authority for ESSM In-service Support Phase execution in accordance with this MOU and will be accountable to the NSPSC for effective implementation, efficient management, and direction of the ESSM In-service Support Phase.
- 4.7 The NSPO PM responsibilities under this MOU include:
- 4.7.1 Managing the procurements, technical support, work share allocation, and financial aspects of the ESSM In-service Support Phase in accordance with the provisions of this MOU.

- 4.7.2 Preparing for NSPSC approval, budget and financial schedules in accordance with Section 5 (Financial Provisions), including ESSM In-Service Support Phase staffing requirements.
- 4.7.3 Consolidating individual Contributing Participant support requirements, preparing procurement requests, and providing administrative and technical support to the Contracting Agency in the placing of Contracts for material, supplies, and services under this MOU.
- 4.7.4 Referring issues to the NSPSC which cannot be resolved within the NSPO.
- 4.7.5 Recommending amendments to this MOU to the NSPSC.
- 4.7.6 Preparing and implementing plans approved by the NSPSC to manage and control the transfer of ESSM In-service Support Phase Equipment provided by any Participant to support the execution of the ESSM In-service Support Phase in accordance with Section 8 (ESSM In-service Support Phase Equipment).
- 4.7.7 Preparing and implementing plans approved by the NSPSC for the disposal of jointly funded ESSM In-service Support Phase Equipment.
- 4.7.8 Forwarding recommendations to the NSPSC for the change of status of Non-contributing Participants and the addition of new Participants in accordance with Section 14 (Accession) of this MOU.
- 4.7.9 Providing technical and procurement support for related equipment, services, and supplies, as requested by the Participants and as approved by the NSPSC.
- 4.7.10 Developing and forwarding to the NSPSC, within three months after the effective date of this MOU, a Project Security Instruction for the ESSM In-service Support Phase and updates to that instruction, as necessary.
- 4.7.11 Preparing and implementing plans required to administer and control ESSM and ESSM-Related elements.
- 4.7.12 Providing an ESSM In-service Support Phase status report at each NSPSC meeting.
- 4.7.13 Providing a final report upon completion or termination of this MOU in accordance with Section 19 (Withdrawal, Termination, Entry into Effect, and Duration) of the ESSM In-service Support Phase.
- 4.7.14 Recommending proposed design changes to the established configuration of ESSM that reduce life cycle costs, enhance military effectiveness, and improve

operational and maintenance suitability to the Contributing Participants for their evaluation and possible adoption.

4.7.15 Developing and forwarding to the NSPSC acquisition strategies.

SECTION 5. FINANCIAL PROVISIONS

- 5.1 Each Contributing Participant will, in accordance with the provisions of this MOU, contribute its equitable share of the costs of cooperative ESSM in-service support and will receive equitable benefits. The United States (U.S.) dollar will be the reference currency for the ESSM In-service Support Phase, and the program fiscal year (FY) will be the U.S. fiscal year.
- 5.2 The financial contributions for cooperative ESSM In-service Support Phase efforts will be shared among the Contributing Participants in the proportion of their individual missile inventories to the total missile inventories of all such Participants participating in a specific effort. This requirement is reflected in the following formula: $S=(A/B) C$. "S" is the financial contribution by an individual Contributing Participant to a cooperative effort. "A" represents the estimated missile inventories of an individual Contributing Participant. The values for "A" are set forth in Annex A (Estimated Missile Inventory Quantities) and will be adjusted by the NSPSC to reflect changes in the Contributing Participants' estimated missile quantities in accordance with paragraph 5.3. "B" is the sum of the individual "A" values of the Contributing Participants. "C" is the NSPSC-approved cost for the specific cooperative effort.
- 5.3 The quantities established in Table A-1 of Annex A (Estimated Missile Inventory Quantities) will not be adjusted until after FY 2004. Beginning in FY 2005 the NSPSC will annually adjust the quantities established in Table A-1 to reflect actual and projected inventory quantities of the Contributing Participants.
- 5.4 All Contributing Participants will also contribute to the costs of managing and directing the ESSM In-service Support Phase in accordance with the formula set forth in paragraph 5.2.
- 5.5 The total Shared Costs for the efforts identified in paragraphs 3.1.1 through 3.1.8 and 3.1.10 of Section 3 (Scope of Work) will not exceed \$225M (U.S. FY 2000 constant dollars) without the prior written consent of the Participants as evidenced by an amendment to this MOU. The total Shared Costs for the efforts identified in paragraph 3.1.9 of Section 3 (Scope of Work) will not exceed \$100M (U.S. FY 2000 constant dollars) without the prior written consent of the Participants as evidenced by an amendment to this MOU.
- 5.6 Those costs associated with missile in-service support and related items and service intended solely and exclusively for use by a Contributing Participant will be paid by that Participant.
- 5.7 The NSPO staff required to manage and direct the ESSM In-Service Support Phase pursuant to this MOU will be the minimum size recommended by the NSPO PM and approved by the NSPSC. The Contributing Participants may provide personnel to staff full-time approved positions, with their cost included in the annual budget for the Shared

Costs for managing and directing the ESSM In-service Support Phase. Such costs will include the salary at the equivalent U.S. pay scale and equivalent U.S. expenses of cooperative travel as approved by the NSPO PM. Contributing Participants will be compensated or have their portion of Shared Costs adjusted to account for the provisions of such staff under arrangements developed by the NSPO PM and approved by the NSPSC. All other staff costs incurred by a Participant in providing such staff will be borne solely by that Participant.

- 5.8 Each Contributing Participant will make funds available in such amounts and at such times as may be required by the NSPSC's approved annual financial schedules to execute the ESSM In-service Support Phase pursuant to this MOU. Approval by the NSPSC of these periodic financial schedules will be deemed to signify the approval of each member to the treatment of costs included therein as ESSM In-service Support Phase Shared / National Costs and to the method of sharing such costs. Each Participant, will effect payments as directed by the NSPSC to minimize costs. Unless otherwise directed by the NSPSC to minimize currency exchange and other costs, each Participant, other than the U.S. DoD, will effect payments by deposit of the amounts thereof in U.S. dollars in a NSPO trust account established and administered by the NSPO PM in accordance with rules promulgated by the NSPSC. Payments by the U.S. DoD will be deemed to have been effected upon the receipt by the NSPO PM of a statement indicating that funds in the requisite amounts are available for obligation and expenditure. The funds deposited in the NSPO trust account will be available to meet ESSM In-service Support Phase Shared Costs and ESSM In-service Support Phase National Costs. All transfers of funds out of the trust account will be certified by the NSPO PM, or by a duly authorized representative appointed by the NSPO PM to make such certification in his absence, as being payment of depositors' shares determined in accordance with and for the purpose of this MOU. Should any of the Participants be unable to make a payment of its financial share at the time required by the financial schedule, and as a result, the NSPO PM is unable to cover the necessary expenses, the NSPO PM will report such shortfall to the NSPSC, which will promptly resolve the matter.
- 5.9 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:
- 5.9.1 Costs associated with national representation at meetings.
 - 5.9.2 Costs associated with any unique national requirements identified by a Participant.
- 5.10 All activities of the Participants in this MOU will be carried out in accordance with their national laws, and the financial obligations of the Participants will be subject to the availability of funds for such purposes.
- 5.11 A Contributing Participant will promptly notify and consult with the other Participants, if available funds are not adequate to fulfill its financial obligations under this MOU, and

will then withdraw in accordance with Section 19 (Withdrawal, Termination, Entry into Effect, and Duration).

- 5.12 The NSPSC, through the NSPO PM, will maintain continuing financial records of funds under its control, costs incurred, and expenditures made. Such records will be available for audit upon reasonable prior notice by a duly authorized representative of a Contributing Participant. The audit of the NSPO for the ESSM In-service Support Phase will be performed by the U.S. DoD on behalf of the Participants. Reports of such audits will be released without any restrictions to all Contributing Participants. The Participants will assist the U.S. DoD on any audit elements required to satisfactorily perform the audit. Where national auditors of a Contributing Participant need to obtain or to inspect specific ESSM In-service Support Phase financial data relevant to that Contributing Participant to be able to fulfill its national obligations, the U.S. DoD will grant access to such specific financial information.
- 5.13 The Participants recognize that it may become necessary for a Participant, in performing Contracting responsibilities for the benefit of the Participants under Section 6 (Contractual Provisions), to incur contractual or other obligations for the benefit of the other Participants prior to the receipt of the other Participants' funds. In the event that a Participant incurs such contractual or other obligations for the benefit of the other Participants prior to receipt of the other Participants' funds, the other Participants will pay their equitable share of such obligations, make funds available in such amounts and at such times as may be required by the obligations, or pay any damages or costs that may accrue from the performance of or cancellation of the obligations in advance of the time such payments, damages, or costs are due.

SECTION 6. CONTRACTUAL PROVISIONS

- 6.1 It is anticipated that the U.S. DoD, acting through the Department of the Navy, will contract for the benefit of the Participants throughout the ESSM In-service Support Phase in accordance with U.S. Contracting laws and procedures. However, the NSPO, after consultation with the U.S. Contracting Officer, may request a Participant other than the U.S. to issue Contracts for the benefit of the Participants throughout the ESSM In-service Support Phase in accordance with that Participant's established national Contracting laws and procedures. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek waivers of national regulations, procurement procedures, and practices. The Contracting Officer for each Contract is the exclusive source for providing contractual direction and instructions to Contractors.
- 6.2 The NSPO PM is responsible for the development of the contracting strategy for the ESSM In-service Support Phase. In developing the contracting strategy, the NSPO PM in conjunction with the Contracting Officer will consider all contracting acquisition methods to achieve the objectives of this MOU.
- 6.3 The Contracting Officer will negotiate to obtain the rights to disclose and use ESSM In-service Support Phase Information required by Section 9 (Disclosure and Use of ESSM In-service Support Phase Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section 7 (Work Sharing), Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), Section 12 (Security), and Section 15 (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer will advise prospective Contractors of their obligation to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer will also require prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.
- 6.4 In the event the Contracting Officer is unable to secure adequate rights to use and disclose ESSM In-Service Support Phase Information, as required by Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter will be referred to the NSPSC for resolution.
- 6.5 Each Contracting Officer will immediately advise the NSPO PM of any cost growth, schedule change, or performance problems of any Contract for which that Contracting Officer is responsible.

- 6.6 Upon request of the Contracting Agency, Contributing Participants will provide quality assurance, inspection / acceptance, Contract audit, and Participant property management services in connection with the placement and administration of Contracts and subcontracts in their nations. These services will be provided by each Participant through normal Government administrative agencies.**

SECTION 7. WORK SHARING

- 7.1** The work performed under this MOU will be distributed amongst the Contributing Participants in accordance with the goal of providing work in each Contributing Participant's country equal to the amount of funds expended in accomplishment of cooperative endeavors under this MOU. It is recognized that attainment of this goal will be consistent with the need to maintain high technical quality and reasonable cost, and the need to achieve the timely, economic, and efficient execution of this MOU.
- 7.2** If a Contributing Participant considers that it has not received its fair share of the work in accordance with this section, that Contributing Participant may raise the matter with the NSPSC for resolution.
- 7.3** No requirement will be imposed by any Participant for work sharing or for other industrial or commercial compensation in connection with this document that is not in accordance with this MOU.

SECTION 8. ESSM IN-SERVICE SUPPORT PHASE EQUIPMENT

- 8.1 Each Participant may provide ESSM In-service Support Phase Equipment identified as being necessary for executing this MOU to the other Participants. Such equipment will remain the property of the providing Participant. A list of all ESSM In-service Support Phase Equipment provided by one Participant to another Participant will be developed and maintained by the NSPO PM and approved by the NSPSC in accordance with Section 4 (Management (Organization and Responsibility)) prior to such transfers.
- 8.2 The receiving Participant(s) will maintain any such ESSM In-service Support Phase Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted. The receiving Participant(s) will pay the cost of damage to (other than normal wear and tear) or loss of ESSM In-service Support Phase Equipment.
- 8.3 All ESSM In-service Support Phase Equipment that is transferred will be used by the receiving Participant(s) only for the purposes of carrying out this MOU. In addition, in accordance with Section 15 (Third Party Sales and Transfers), ESSM In-service Support Phase Equipment will not be re-transferred to a Third Party without the prior written approval of the providing Participant.
- 8.4 ESSM In-service Support Phase Equipment transferred to one or more Participants under this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU or the withdrawal of either the providing or receiving Participants.
- 8.5 Any ESSM In-service Support Phase Equipment which is jointly funded by the Contributing Participants for use under this MOU will be disposed of prior to the expiration of the ESSM In-service Support Phase, as determined by the NSPSC. Disposal of jointly funded ESSM In-service Support Phase Equipment may include a transfer of the interest of one Participant in such equipment to another Participant or the sale of such equipment to a Third Party in accordance with Section 15 (Third Party Sales and Transfers) of this MOU. The Contributing Participants will share the consideration from jointly funded ESSM In-service Support Phase Equipment sold or transferred as determined by the NSPSC.

SECTION 9. DISCLOSURE AND USE OF ESSM IN-SERVICE SUPPORT PHASE INFORMATION

9.1 General

- 9.1.1 All Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out the ESSM In-service Support Phase. The Participants will receive ESSM In-service Support Phase Information and will acquire rights to use such information to enable the execution of the ESSM In-service Support Phase and subsequent further improvements of the ESSM and ESSM Related Elements. The nature and amount of ESSM In-service Support Phase Information to be received will be consistent with the objectives stated in Section 2 (Objectives), Section 3 (Scope of Work), and the operational requirements set forth in the ESSM Requirements Document, Revision 5, 22 October 1993 and revisions thereto.
- 9.1.2 The Contributing Participants will disclose to Non-contributing Participants selected ESSM In-service Support Phase Information as determined by the NSPSC in accordance with Section 4 (Management (Organization and Responsibility)) paragraph 4.5.5. The Non-contributing Participants will have the right to use this information only for evaluation and planning purposes related to support of ESSM and integration into NATO SEASPARROW Systems, but they will have no rights to disclose or transfer this information.
- 9.1.3 Notwithstanding any other provision in this section, the U.S. will not disclose ESSM In-service Support Phase Information related to ESSM U.S. Unique Item production, manufacturing and maintenance design data, manufacturing know-how, and software source code and documentation, nor ESSM U.S. employment doctrine, raw test data, U.S.-specific threat data, and ESSM countermeasures vulnerability, unless otherwise authorized by the U.S. pursuant to its national disclosure laws and policies. The U.S. will, however, make available:
- 9.1.3.1 To the Contributing Participants, subject to national disclosure laws and policies, ESSM In-service Support Phase Foreground Information and ESSM In-service Support Phase Background Information sufficient to enable effective pre-launch storage, maintenance and handling of ESSM and for integration into current and planned anti-air warfare systems excluding Advanced X-band Guidance Capability; and
 - 9.1.3.2 To X-band Participants ESSM In-service Support Phase Foreground Information and, subject to national disclosure laws and policies, ESSM In-service Support Background Information on Advanced

X-band Guidance Capability sufficient to enable effective pre-launch storage, maintenance and handling of ESSM and for integration into current and planned anti-air warfare systems employing Advanced X-band Guidance Capability.

- 9.1.4 The X-band Participants will have the right to use or to have used the data defined in paragraph 9.1.3.2 free of charge for Defense Purposes.
- 9.1.5 The U.S. DoD will have the right to use all ESSM In-service Support Phase Foreground Information pertaining to Advanced X-band Guidance Capability free of charge for ESSM Program purposes.
- 9.1.6 The U.S. DoD will have the right to use all ESSM In-service Support Phase Foreground Information pertaining to Advanced X-band Guidance Capability on fair and reasonable terms to be mutually determined with the X-band Participants for:
 - 9.1.6.1 Defense Purposes (other than ESSM Program Purposes); and
 - 9.1.6.2 Sales or other transfers to a Third Party.
- 9.1.7 The Participants other than the U.S. DoD and the X-band Participants will have the right to have disclosed to them and to use or have used the data defined in paragraph 9.1.3.2 for Defense Purposes on fair and reasonable terms to be mutually determined with the X-band Participants.

9.2 Government ESSM In-service Support Phase Foreground Information

- 9.2.1 Disclosure: Except as noted in Paragraph 9.1.3 through 9.1.7 above, ESSM In-service Support Phase Foreground Information generated by any government facility in whole or in part will be made available without charge to all Contributing Participants.
- 9.2.2 Use: Each Contributing Participant may use or may have used on its behalf, without charge, Government ESSM In-service Support Phase Foreground Information for its Defense Purposes. The Contributing Participant generating Government ESSM In-Service Support Phase Foreground Information will also retain all its rights of use thereto. If a Contributing Participant intends to use the Government ESSM In-service Support Phase Foreground Information in a sale or other transfer to a Third Party, then the provisions of Section 15 (Third Party Sales and Transfers) of this MOU will apply..

9.3 Government ESSM In-service Support Phase Background Information

- 9.3.1 Disclosure: Except as noted in Paragraph 9.1.3 through 9.1.7 above, each Contributing Participant, upon request, will disclose without charge to all Contributing Participants any relevant ESSM In-service Support Phase Background Information in its possession, provided that:
- 9.3.1.1 It is necessary to or useful in the ESSM In-service Support Phase. The Contributing Participant in possession of the information, in consultation with the other Contributing Participants, will determine whether it is "necessary to" or "useful in" the ESSM In-service Support Phase;
 - 9.3.1.2 It may be made available without incurring liability to holders of proprietary rights (to include exclusive user rights); and
 - 9.3.1.3 Disclosure is consistent with national disclosure laws and policies of the furnishing Participant.
- 9.3.2 Use: ESSM In-service Support Phase Background Information disclosed by one Contributing Participant may be used without charge by the other Contributing Participants for ESSM Program purposes only and on fair and reasonable terms for Defense Purposes. However, the furnishing Participant will retain all its rights with respect to such ESSM In-service Support Phase Background Information.

9.4 Contractor ESSM In-service Support Phase Foreground Information

- 9.4.1 Disclosure: Except as noted in Paragraph 9.1.3 through 9.1.7 above, ESSM In-service Support Phase Foreground Information which is generated by a Contractor and is a deliverable under a Contract will be made available without charge to all Contributing Participants. Foreground Information generated by a Contractor but not delivered should be made available by the Contractor upon request of the Contributing Participants at the cost of its compilation, reproduction, and delivery only.
- 9.4.2 Use: Each Contributing Participant may use or may have used on its behalf, without charge, Contractor ESSM In-service Support Phase Foreground Information for its Defense Purposes. The providing Contributing Participant will also retain all its rights of use thereto in accordance with the applicable Contract(s). If a Contributing Participant intends to use the Contractor ESSM In-service Support Phase Foreground Information in a sale or other transfer to a Third Party, then the provisions of Section 15 (Third Party Sales and Transfers) of this MOU will apply.

9.5 Contractor ESSM In-service Support Phase Background Information

9.5.1 Contractor ESSM In-service Support Phase Background Information Delivered Under Contracts

9.5.1.1 Disclosure: Except as noted in Paragraph 9.1.3 through 9.1.7 above, ESSM In-service Support Phase Background Information delivered under Contracts awarded in accordance with this MOU will be made available without charge to all Contributing Participants.

9.5.1.2 Use:

9.5.1.2.1 Contractor ESSM In-service Support Phase Background Information delivered under Contracts without limitation on rights of use and transfer may be used by the Contributing Participants without charge for ESSM Program purposes and for Defense Purposes, on fair and reasonable terms, if necessary.

9.5.1.2.2 Contractor ESSM In-service Support Phase Background Information delivered under Contracts subject to limitations on rights of use and transfer may be used by the Contributing Participants subject to the terms of the holders of the rights to that information.

9.5.2 Other Contractor ESSM In-service Support Phase Background Information

9.5.2.1 Disclosure: Except as noted in Paragraph 9.1.3 through 9.1.7 above, any other Contractor ESSM In-service Support Phase Background Information generated by Contractors which is in the possession of a Contributing Participant will be made available without charge to the other Contributing Participants upon request, provided that:

9.5.2.1.1 It is necessary to or useful in the ESSM In-service Support Phase. The Contributing Participant in possession of the information in consultation with the other Contributing Participants will determine whether it is "necessary to" or "useful in" the ESSM In-service Support Phase;

9.5.2.1.2 It may be made available without incurring liability to holders of proprietary rights (to include exclusive user rights); and

9.5.2.1.3 Disclosure is consistent with national disclosure laws and policies of the furnishing Participant.

9.5.2.2 Use:

9.5.2.2.1 Contractor ESSM In-service Support Phase Background Information, that satisfies all the conditions set forth in 9.5.2.1 above, may be used by the Contributing Participants without charge for ESSM Program purposes and for Defense Purposes, on fair and reasonable terms, if necessary.

9.5.2.2.2 Contractor ESSM In-service Support Phase Background Information satisfying the conditions set forth in 9.5.2.1.1 and 9.5.2.1.3, but not satisfying the conditions set forth in 9.5.2.1.2 above, will be disclosed to and may be used by the Contributing Participants subject to the terms of the holders of proprietary rights.

9.5.2.2.3 The furnishing Participant will retain all its rights with respect to such Contractor ESSM In-service Support Phase Background Information it furnishes.

9.6 Alternative Uses of ESSM In-service Support Phase Information.

9.6.1 Any ESSM In-service Support Phase Background Information provided by a Contributing Participant will be used by the receiving Contributing Participants only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Contributing Participant.

9.6.2 The prior written consent of the Contributing Participants will be required for the use of ESSM In-service Support Phase Foreground Information (excluding that information relating to U.S. Unique Items and Advanced X-band Guidance Capability) for purposes other than those set forth in this MOU. The prior written consent of the U.S. DoD will be required for the use of ESSM In-service Support Phase Foreground Information related to U.S. Unique Items for purposes other than those set forth in this MOU. The prior written consent of the X-band Participants and the U.S. DoD will be required for the use of ESSM In-service Support Phase Foreground Information related to Advanced X-band Guidance Capability for purposes other than those set forth in this MOU.

9.7 Proprietary ESSM In-service Support Phase Information. All ESSM In-service Support Phase Information subject to proprietary interest will be identified and appropriately marked. Unmarked information will be assumed to be free from any proprietary rights restrictions.

9.8 Patents

- 9.8.1** Where a Participant owns title to an ESSM In-service Support Phase Invention or has the right to receive title to an ESSM In-service Support Phase Invention, that Participant will consult with the other Participants regarding the filing of its Patent application for such ESSM In-service Support Phase Invention. The Participant which has or receives title to such ESSM In-service Support Phase Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on its behalf or its Contractors, as appropriate, Patent applications covering that ESSM In-service Support Phase Invention. If a Participant having filed or caused to be filed a Patent application decides not to proceed with application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.
- 9.8.2** The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to ESSM In-service Support Phase Inventions.
- 9.8.3** The other Contributing Participants will acquire a nonexclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Contributing Participants, throughout the world for Defense Purposes any ESSM In-service Support Phase Invention.
- 9.8.4** Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the ESSM In-service Support Phase. Insofar as possible, the other Participants will provide information available to them that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the ESSM In-service Support Phase of any invention covered by a Patent issued by their respective countries.

SECTION 10. CONTROLLED UNCLASSIFIED INFORMATION

- 10.1 Except as otherwise provided in this MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:**
- 10.1.1 Such information will be used only for the purposes authorized for use of ESSM In-service Support Phase Information as specified in Section 9 (Disclosure and Use of ESSM In-service Support Phase Information).**
 - 10.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under paragraph 10.1.1. and will be subject to the provisions of Section 15 (Third Party Sales and Transfers).**
 - 10.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in paragraph 10.1.2, unless the originating Participant consents in writing prior to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.**
- 10.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will mutually determine, in advance and in writing, the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Project Security Instruction.**
- 10.3 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this MOU.**

SECTION 11. VISITS TO ESTABLISHMENTS

- 11.1 Each Participant will permit visits to its government establishments, agencies, and laboratories, and contractor facilities by employees of the other Participants or by employees of the other Participants' contractor(s), provided that the visit is authorized by the Participants involved in the visit, and the employees have any necessary and appropriate security clearances and a need-to-know.**
- 11.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel and will be subject to the provisions of this MOU.**
- 11.3 Requests for visits by personnel of one Participant to a facility of another Participant will be coordinated through official channels and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the ESSM Program.**

SECTION 12. SECURITY

- 12.1 All Classified Information or material provided or generated pursuant to this MOU will be used, stored, handled, transmitted, and safeguarded in accordance with the Participants' applicable national security laws and regulations to the extent that they provide a degree of protection no less stringent than that provided for NATO classified material as set forth in "Security within the North Atlantic Treaty Organization," NATO Document C-M (55) 15(Final) 3rd issue dated 15 October 1997, including all supplements and amendments thereto.
- 12.2 Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authority (DSA) of the Participants. Such information and material will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU.
- 12.3 Each Participant will take all lawful steps available to it to ensure that information provided or generated pursuant to this MOU is protected from disclosure, except as permitted by paragraph 12.7, unless the other Participants consent in writing prior to such disclosure. Accordingly, each Participant will ensure that:
- 12.3.1 The recipient will not release the Classified Information to any individual, government, national organization, or other entity of a Third Party without the prior written approval of the originating Participant in accordance with the procedures set forth in Section 15 (Third Party Sales and Transfers).
 - 12.3.2 The recipient will not use the Classified Information for any purpose other than the purposes provided for in this MOU.
 - 12.3.3 The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.
- 12.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, the final results of the investigation, and the corrective action taken to preclude recurrences.
- 12.5 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by

nationals or other entities of a Third Party, the Participants will concur before permitting such access.

- 12.6 For any facility wherein Classified Information or material is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to Classified Information or material involved in this MOU to those persons who have been properly approved for access and have a need-to-know.
- 12.7 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the ESSM In-service Support Phase.

SECTION 13. CLAIMS AND LIABILITY

13.1 Having regard to multilateral and bilateral treaties and agreements of the Participants concerning liability for claims and subject to such treaties and agreements, when applicable, for liability arising out of, or in conjunction with, activities undertaken in the performance of official duty in the execution of and for the benefit of the ESSM In-service Support Phase, the provisions set forth below will apply:

- 13.1.1** With the exception of claims for loss or damage to ESSM In-service Support Phase Equipment provided by a Contributing Participant under Section 8 (ESSM In-Service Support Phase Equipment), each Participant waives all claims against the other Participants for injury to or death of its military or civilian personnel and for damage to or loss of its property or jointly funded property caused by personnel or agents (which do not include ESSM In-service Support Phase Contractors) of the other Participants. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Participant's personnel or agents, the cost of any liability will be borne by that Participant alone.
- 13.1.2** Claims from any other persons for injury, death, damage, or loss of any kind will be processed by the most appropriate Participant, as determined by the Participants. Generally, this will be the Participant country in which the claim arose. Any costs determined to be owed the claimant for claims pertaining to the ESSM In-service Support Phase effort will be borne by the Contributing Participants in such proportions as determined by those Contributing Participants at that time. If however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Participant's or Participants' personnel or agents, the cost of any liability will be borne by that (those) Participant(s) alone.
- 13.1.3** In the case of damage caused by or to jointly funded property of the Participants, where the cost of making good such damage is not recoverable from other persons, such cost will be borne by the Contributing Participants in such proportions as they determine at that time.
- 13.1.4** Claims arising under any Contract awarded pursuant to Section 6 (Contractual Provisions) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving unduly hazardous activity where the cost of insurance is excessively high), the Participants may consider whether to indemnify Contractors against liability claims by any other persons.

SECTION 14. ACCESSION

- 14.1** Upon its request, a Non-contributing Participant will be permitted to accede to Contributing Participant status. The accession of a Non-Contributing Participant to the status of a Contributing Participant will require an amendment to this MOU, for which the Participants will jointly formulate the provisions.
- 14.2** It is recognized that potential additional participants may wish to join the ESSM In-service Support Phase.
 - 14.2.1** Mutual approval by the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss the arrangements under which non-participants might join, including the furnishing of releasable ESSM In-service Support Phase Information for evaluation prior to joining. Disclosure of ESSM In-service Support Phase Information necessary to conduct discussions will be in accordance with provisions of this MOU.
 - 14.2.2** The Participants will jointly formulate the provisions under which additional Participants might join. The addition of new Participants will require amendment of this MOU.

SECTION 15. THIRD PARTY SALES AND TRANSFERS

- 15.1 Where only U.S. Unique Items are involved, the U.S. DoD may, after consultation with the other Participants, sell, transfer title to, disclose, or transfer possession of that ESSM In-service Support Phase Foreground Information, jointly funded or cooperatively produced ESSM In-service Support Phase Equipment, and any item or service produced either wholly or in part from ESSM In-service Support Phase Foreground Information or with jointly funded or cooperatively produced ESSM In-service Support Phase Equipment relating to U.S. Unique Items to Non-contributing Participants or Third Parties. However, the sale, transfer, or disclosure of any U.S. Unique Item that contains Advanced X-band Guidance Capability will also be subject to approval of the X-band Participants. The U.S. DoD recognizes the importance to the other Contributing Participants of U.S. DoD decisions on such potential sales, disclosures, and transfers and will accordingly take into account the views held by other Contributing Participants in making its decisions. The U.S. DoD recognizes that sales, disclosures, or other transfers described in this paragraph will only be made if the Government(s) of the recipient(s) consents in writing that it will:
- 15.1.1 Not retransfer or permit the further retransfer of any equipment or information provided.
 - 15.1.2 Use or permit the use of the equipment or information only for the purposes for which such equipment or information is furnished.
- 15.2 The U.S. DoD may, after prior consultation with the other Contributing Participants, permit sale, disclosure, or transfer by others of U.S. Unique Items, except that any such sale, disclosure, or transfer that includes Advanced X-band Guidance Capability will also be subject to approval of the X-band Participants.
- 15.3 Except as provided in paragraph 15.1 of this section, the Contributing Participants will not sell, transfer title to, disclose or transfer possession of ESSM In-service Support Phase Foreground Information, jointly funded or cooperatively produced ESSM In-service Support Phase Equipment, or any item or service produced either wholly or in part from ESSM In-service Support Phase Foreground Information or with jointly funded or cooperatively produced ESSM In-service Support Phase Equipment to any Non-contributing Participant or to any Third Party without the prior written approval of all Contributing Participants. Furthermore, the Contributing Participants will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written approval of all Contributing Participants. Sales, disclosures, or other transfers described in this paragraph will not be authorized by the Contributing Participants unless the government(s) of the intended recipient(s) consents in writing that it will:
- 15.3.1 Not retransfer or permit the further retransfer of any equipment or information provided.

15.3.2 Use or permit the use of the equipment or information only for the purposes specified by the Contributing Participants.

- 15.4 Non-contributing Participants will not sell, transfer title to, disclose, or transfer possession of ESSM In-service Support Phase Foreground Information or any item or service produced either wholly or in part from ESSM In-service Support Phase Foreground Information or with jointly funded or cooperatively produced ESSM In-service Support Phase Equipment to any Third Party.
- 15.5 The Participants will not sell, transfer title to, disclose, or transfer possession of ESSM In-service Support Phase Background Information or non-jointly funded or non-cooperatively produced ESSM In-service Support Phase Equipment to any Third Party without the prior written approval of the provider of such equipment or information. The provider will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.
- 15.6 As to paragraphs 15.3, 15.4, and 15.5 of this section, approval for sales and transfers to Non-contributing Participants or to Third Parties of ESSM In-service Support Phase Foreground Information, jointly funded or cooperatively produced ESSM In-service Support Phase Equipment, or any item or service produced either wholly or in part from ESSM In-service Support Phase Foreground Information or with jointly funded or cooperatively produced ESSM In-service Support Phase Equipment will not be withheld except for reasons of foreign policy, national security, or national laws. The Contributing Participants will not refuse approval of such a sale or transfer to a Non-contributing Participant or to a Third Party when they would be willing to sell or transfer such equipment or information to the same Non-contributing Participant or Third Party.
- 15.7 Sales and other transfers of ESSM In-service Support Phase Foreground Information, or any item or service produced either wholly or in part from ESSM In-service Support Phase Foreground Information or with jointly funded or cooperatively produced ESSM In-service Support Phase Equipment, will attract a levy to be shared among the Contributing Participants. Prior to any such sale or other transfer, the amounts of levy and the procedures for assessing and distributing levies will be determined by the Contributing Participants coordinated through the NSPSC consistent with the laws and regulations of each Contributing Participant. Any Contributing Participant may reduce or waive recovery of its share of levy in accordance with its national laws, regulations, and practices.
- 15.8 The work required to provide in-service support for ESSM, its sections, and its components for sale to Third Parties will be shared among the Contributing Participants in accordance with this MOU unless otherwise decided by the NSPSC.

SECTION 16. CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

- 16.1 Customs duties, taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under the ESSM In-service Support Phase.
- 16.2 Each Participant will endeavor to ensure that customs duties, taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs over and above that Participant's Shared Costs of this phase. If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts or components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place.

SECTION 17. SETTLEMENT OF DISPUTES

- 17.1 Disputes among the Participants arising under or relating to this MOU will be resolved only by consultation among the Participants and will not be referred to an individual, to a national court, to an international tribunal, or to any other person or entity for settlement.

SECTION 18. AMENDMENTS

18.1 This MOU may be amended by written amendment signed by the Participants or their duly authorized representatives.

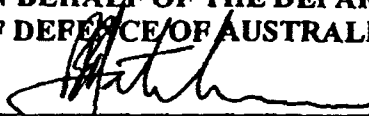
SECTION 19. WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION

- 19.1 This MOU may be terminated at any time upon the mutual written approval of the Participants. In the event the Participants mutually determine to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms.
- 19.2 Any Participant may withdraw from this MOU upon 180 days written notification to the other Participants. Such notice will be the subject of immediate consultation by the NSPSC to decide upon the appropriate course of action for the continuation and completion of the work described in Section 3 (Scope of Work) to the mutual satisfaction of the remaining Participants. In the event of such withdrawal, the following rules will apply:
- 19.2.1 The withdrawing Participant will continue participation, financial or otherwise, up to the effective date of withdrawal.
 - 19.2.2 The withdrawing Participant will be liable for all direct costs arising as a result of cancellation of orders under Contract, including costs of any Contract termination or modification resulting from such cancellations. However, these costs will not exceed the withdrawing Participant's share of Contract costs if withdrawal had not occurred. The NSPSC, in cooperation with the withdrawing Participant, will endeavor to keep these direct costs of withdrawal as low as possible.
 - 19.2.3 If requested by the remaining Participants, the work allocated to the industry of the Participant withdrawing and associated jointly funded ESSM In-service Support Phase Equipment will be transferred to the other Participants' industries.
 - 19.2.4 All ESSM In-service Support Phase Information and rights therein received under the provisions of this MOU prior to the withdrawal will be retained by the Participants, subject to the provisions of this MOU.
 - 19.2.5 If requested by the remaining Participants, the withdrawing Participant may continue to administer ESSM In-Service Support Phase Contract(s) which it awarded on behalf of the remaining Participants on a reimbursable basis.
- 19.3 The respective rights and responsibilities of the Participants regarding Section 8 (ESSM In-service Support Phase Equipment), Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), Section 12 (Security), Section 13 (Claims and Liability), Section 15 (Third Party Sales and Transfers), and Section 17 (Settlement of Disputes) will continue notwithstanding termination of, withdrawal from, or expiration of this MOU.

19.4 This MOU will enter into effect upon signature by all the Participants. This MOU will remain in effect for 15 years, unless terminated under the provisions of paragraph 19.1 above. This MOU may be extended by the mutual written approval of the Participants.

The undersigned, being duly authorized, have signed this MOU in thirteen (13) original copies:

**FOR THE MINISTER OF DEFENCE
ON BEHALF OF THE DEPARTMENT
OF DEFENCE OF AUSTRALIA**


Signature

Commodore P. B. Hatcher CSC RAN

Name

Director General Surface Warfare Systems - A

Title

1 May 2000

Date

San Diego, California USA

Location

**FOR THE MINISTER OF NATIONAL
DEFENCE OF THE KINGDOM OF
BELGIUM**


Signature

CDR(SG) Jan R. A. De Vos

Name

ACOS Logistics

Title


1 May 2000

Date

San Diego, California USA

Location

**FOR THE MINISTER OF NATIONAL
DEFENCE OF CANADA**


Signature

J. R. Sylvester, Cmdre

Name

DGMEPM

Title

10 October 2000

Date

Hull, Quebec Canada

Location

**FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF DENMARK**


Signature

CDR(SG) John Hansen

Name

ACSP

Title

1 May 2000

Date

San Diego, California USA

Location

**FOR THE FEDERAL MINISTRY OF
DEFENSE OF THE FEDERAL
REPUBLIC OF GERMANY**



Signature

Gerhard Coors

Name

B Dir

Title

1 May 2000

Date

San Diego, California USA

Location

**FOR THE MINISTER OF DEFENCE
OF GREECE**



Signature

Capt. I. Kidoniefs HN

Name

HNGS/C3

Title

1 May 2000

Date

San Diego, California USA

Location

**FOR THE MINISTER OF NATIONAL
DEFENCE OF ITALY**



Signature

RADM Giancarlo Cocchi

Name

Italian Navy General Staff-Chief Studies, Project
and Materials Department-

Title

29 May 2000

Date

Roma, Italy

Location

**FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF THE
NETHERLANDS**



Signature

A. P. Hummel

Name

Deputy Chief of Naval Materiel (Engineering)

Title

1 May 2000

Date

San Diego, California USA

Location

**FOR THE MINISTER OF DEFENCE
OF THE KINGDOM OF NORWAY**

Signature

Bjorn Krohn
Name

Captain, Royal Norwegian Navy
Title

1 May 2000
Date

San Diego, California USA
Location

**FOR THE MINISTER OF DEFENSE
OF PORTUGAL**

Signature

Jose Antonio Oliveira Viegas
Name

Commander, Portuguese Navy
Title

1 May 2000
Date

San Diego, California USA
Location

**FOR THE MINISTER OF DEFENSE OF
THE KINGDOM OF SPAIN**

Signature

Jose Manuel Marco Franco
Name

V.A. Director Construcciones Navales
Title

25 October 2001
Date

Madrid, Spain
Location

**FOR THE MINISTER OF DEFENCE
OF TURKIYE**

Signature

A. Atilla Alp
Name

Chief of Ordnance Dept. of TN
Title

1 May 2000
Date

San Diego, California USA
Location

**FOR THE SECRETARY OF DEFENSE
ON BEHALF OF THE DEPARTMENT
OF DEFENSE OF THE UNITED
STATES OF AMERICA**



Signature

Dennis G. Morral, RADM USN

Name

PEO Expeditionary Warfare

Title

1 May 2000

Date

San Diego California USA

Location

ANNEX A
ESTIMATED MISSILE INVENTORY QUANTITIES

Table A-1. Estimated Missile Inventory Quantities

Participant	Quantities	Percentage (%) of Total
Australia	520	12.38%
Canada	300	7.14%
Denmark	100	2.38%
Germany	403	9.60%
Greece	70	1.67%
The Netherlands	382	9.10%
Norway	150	3.57%
Spain	120	2.86%
Turkiye	78	1.86%
United States	2,076	49.44%
Total	4,199	100%

AMENDMENT ONE TO THE

MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

AMONGST

THE MINISTER OF DEFENCE ON BEHALF OF THE DEPARTMENT OF DEFENCE OF
AUSTRALIA

AND

THE MINISTER OF NATIONAL DEFENCE OF THE KINGDOM OF BELGIUM

AND

THE MINISTER OF NATIONAL DEFENCE OF CANADA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF DENMARK

AND

THE FEDERAL MINISTRY OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY

AND

THE MINISTER OF DEFENCE OF GREECE

AND

THE MINISTER OF DEFENCE OF ITALY

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF THE NETHERLANDS

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF NORWAY

AND

THE MINISTER OF DEFENSE OF PORTUGAL

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF SPAIN

AND

THE MINISTER OF DEFENCE OF TURKIYE

AND

THE SECRETARY OF DEFENSE ON BEHALF OF THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA

PREAMBLE

The Minister for Defence on behalf of the Department of Defence of Australia, the Minister of National Defence of Canada, the Minister of Defence of the Kingdom of Denmark, the Federal Ministry of Defense of the Federal Republic of Germany, the Ministry of National Defence of the Hellenic Republic, the Minister of Defence of the Kingdom of The Netherlands, the Minister of Defence of the Kingdom of Norway, the Minister of Defence of the Kingdom of Spain, the Ministry of National Defence of Türkiye, and the Department of Defense of the United States of America, referred to as the "Contributing Participants," and the Minister of Defence of the Kingdom of Belgium and the Minister of Defence of Portugal, referred to as the "Non-contributing Participants," and collectively referred to as the "Participants";

Considering the Memorandum of Understanding for the Cooperative In-Service Support of the Evolved Seasparrow Missile amongst the Minister of Defence on behalf of the Department of Defence of Australia, the Minister of National Defence of the Kingdom of Belgium, the Minister of National Defence of Canada, the Minister of Defence of the Kingdom of Denmark, the Federal Ministry of Defense of the Federal Republic of Germany, the Minister of Defence of Greece, the Minister of Defence of Italy, the Minister of Defence of the Kingdom of The Netherlands, the Minister of Defence of the Kingdom of Norway, the Minister of Defence of Portugal, the Minister of Defence of the Kingdom of Spain, the Minister of Defence of Türkiye, and the Secretary of Defense on behalf of the Department of Defense of the United States of America, which entered into effect October 25, 2001 (hereinafter referred to as the "MOU");

Recognizing that the Minister of Defence of Italy has withdrawn from the MOU;

Have reached the following understandings:

SECTION I PURPOSE

The purpose of this Amendment is to increase the Shared Costs ceilings in the MOU and extend the duration of the MOU. In addition, this Amendment adds definitions, adds export control text, and adds Cooperative Project Personnel text.

**SECTION II
AMENDMENT**

The MOU is hereby amended as follows:

1. Delete the Title Page and insert the following new Title Page:

“MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

AMONGST

THE MINISTER FOR DEFENCE ON BEHALF OF THE DEPARTMENT OF DEFENCE OF
AUSTRALIA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF BELGIUM

AND

THE MINISTER OF NATIONAL DEFENCE OF CANADA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF DENMARK

AND

THE FEDERAL MINISTRY OF DEFENCE OF THE FEDERAL REPUBLIC OF GERMANY

AND

THE MINISTRY OF NATIONAL DEFENCE OF THE HELLENIC REPUBLIC

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF THE NETHERLANDS

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF NORWAY

AND

THE MINISTER OF DEFENCE OF PORTUGAL

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF SPAIN

AND

THE MINISTRY OF NATIONAL DEFENCE OF TURKIYE

AND

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA”

2. Change the Table of Contents as follows:
 - a. Add the following after “ANNEX A -- ESTIMATED MISSILE INVENTORY QUANTITIES”: “ANNEX B -- COOPERATIVE PROJECT PERSONNEL”.
3. Replace the terms “prospective Contractor” and “prospective Contractors” with “Prospective Contractor” and “Prospective Contractors”, respectively, wherever they appear in the MOU.
4. Change Section 1 (Definitions) as follows:
 - a. Replace subparagraphs 1.1.18, 1.1.24, and 1.1.27 with the following:

“1.1.18 ESSM In-service Support Phase Information means any information provided to, generated in, or used in the ESSM In-service Support Phase, regardless of form or type. This includes, but is not limited to, that of a scientific, technical, business, or financial nature, whether or not subject to intellectual property rights.”

“1.1.24 Participant means a signatory to this MOU, which includes both Contributing Participants and Non-contributing Participants (see Preamble). Contractors and Contractor Support Personnel will not be representatives of a Participant under this MOU.”

“1.1.27 Shared Costs means those costs jointly funded by two or more of the Contributing Participants.”
 - b. Add the following terms and definitions, and renumber current subparagraphs 1.1.9 through 1.1.30 as appropriate, to insert the new subparagraphs:

“1.1.9 Contractor Support Personnel means persons specifically identified as providing administrative, managerial, scientific, or technical support services to one or more Participants under a support Contract.”

“1.1.12 Cooperative Project Personnel (CPP) means military members or civilian employees of a Parent Participant, assigned to the NATO SEASPARROW Project Office (NSPO), performing managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other NSPO staff duties in furtherance of the ESSM In-service Support Phase.”

“1.1.24 Host Participant means a Participant in whose country the NATO SEASPARROW Project Office or a division thereof is physically located.”

“1.1.26 National Deputy means a military member or civilian employee of a Participant assigned to the NATO SEASPARROW Project Office (NSPO) who performs NSPO staff duties assigned by the NSPO PM and additional duties, which may or may not be related to the NSPO, on behalf of that Participant’s Government. When performing these NSPO staff duties as

assigned by the NSPO PM, a Parent Participant's National Deputy will be considered a CPP. When performing additional duties related to NSPO assigned by a Parent Participant, a National Deputy will be considered a CPP. When a National Deputy performs additional duties unrelated to the NSPO, and performed outside NSPO facilities, the National Deputy will not be considered a CPP, and the status with regard to the assignment in the Host Participant's country will be determined under other applicable written arrangements between the Host Participant and the Parent Participant or between their respective Governments."

"1.1.28 Parent Participant means a Participant, other than the Host Participant, that assigns a military member or civilian employee to the NATO SEASPARROW Project Office or a division thereof."

"1.1.32 Prospective Contractor means any entity that seeks to enter into a Contract to be awarded by a Participant's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled ESSM In-service Support Phase Information, is eligible to receive such Information."

5. Change Section 4 (Management (Organization and Responsibility)), as follows:

a. Add the following after subparagraph 4.5.16:

"4.5.17 Employing its best efforts to resolve, in consultation with the export control authorities of the Participant concerned, any export control issues raised by the NSPO PM in accordance with subparagraph 4.7.16 of this Section or raised by a Participant's NSPSC representative in accordance with subparagraph 9.1.8.4 of Section 9 (Disclosure and Use of ESSM In-service Support Phase Information) of this MOU."

b. Add the following after subparagraph 4.7.15:

"4.7.16 Monitoring export control arrangements required to implement this MOU and, if applicable, referring immediately to the NSPSC any export control issues that could adversely affect the implementation of this MOU."

6. Change Section 5 (Financial Provisions) as follows:

a. In the first sentence of paragraph 5.5, replace "\$225M" with "\$825M".

b. In the second sentence of paragraph 5.5, replace "\$100M" with "\$300M".

c. Replace the second sentence of paragraph 5.7 with the following:

"The Contributing Participants may provide personnel, including Cooperative Project Personnel (CPP) assigned in accordance with Annex B (Cooperative Project Personnel) of this MOU and Host Participant personnel, to staff the NSPO

to manage and direct the ESSM In-service Support Phase, with the personnel cost included in the Shared Costs in the annual budget for the ESSM In-service Support Phase, as applicable.”

d. Delete the last sentence of paragraph 5.7.

e. Add the following after subparagraph 5.9.2:

“5.9.3 Costs associated with the National Deputy assigned to the NSPO unless otherwise decided by the NSPSC to be of benefit to the ESSM In-service Support Phase.”

f. Add the following after paragraph 5.13:

“5.14 The payment of personnel costs will be handled as follows:

5.14.1 The Host Participant will make payment for salary, allowances, and travel of Host Participant personnel.

5.14.2 The Parent Participant will make payment for salary, allowances, travel, accommodations, and transportation to and from the NSPO of CPP and their dependents, in accordance with their national laws and regulations.

5.14.3 Any subsequent compensation or adjustment of Shared Costs for Contributing Participants to account for personnel costs will be made in accordance with paragraph 5.7 of this Section.”

7. Change Section 6 (Contractual Provisions) as follows:

a. Replace the second sentence of paragraph 6.3 with the following:

“The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section 7 (Work Sharing), Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), Section 12 (Security), Section 15 (Third Party Sales and Transfers), and the export control provisions, in particular, paragraphs 6.4 and 6.5 of this Section.”

b. Add the following after paragraph 6.3 and renumber current paragraphs 6.4 through 6.6 as paragraphs 6.6 through 6.8:

“6.4 Each Participant will legally bind its Contractors to a requirement that the Contractor will not retransfer or otherwise use export-controlled ESSM In-service Support Phase Information furnished by another Participant for any purpose other than the purposes authorized under this MOU. The Contractor will also be legally bound not to retransfer the export-controlled ESSM In-service Support Phase Information to another Contractor or subcontractor unless that Contractor or subcontractor has been legally bound to limit use of the information to the purposes authorized under this MOU. Export-controlled ESSM In-service

Support Phase Information furnished by one Participant under this MOU may only be retransferred by another Participant to its Contractors if the legal arrangements required by this paragraph have been established.

- 6.5 Each Participant will legally bind its Prospective Contractors to a requirement that the Prospective Contractor will not retransfer or otherwise use export-controlled ESSM In-service Support Phase Information furnished by another Participant for any purpose other than responding to a solicitation issued in furtherance of the purposes authorized under this MOU. Prospective Contractors will not be authorized use for any other purpose if they are not awarded a Contract. The Prospective Contractors will also be legally bound not to retransfer the export-controlled ESSM In-service Support Phase Information to a prospective subcontractor unless that prospective subcontractor has been legally bound to limit use of the export-controlled ESSM In-service Support Phase Information for the purpose of responding to the solicitation. Export-controlled ESSM In-service Support Phase Information furnished by one Participant under this MOU may only be retransferred by another Participant to its Prospective Contractors if the legal arrangements required by this paragraph have been established. Upon request by the furnishing Participant, the receiving Participant will identify its Prospective Contractors and prospective subcontractors receiving such export-controlled ESSM In-service Support Phase Information."

8. Change Section 9 (Disclosure and Use of ESSM In-service Support Phase Information) as follows:

- a. Add the following after subparagraph 9.1.7:

"9.1.8 The following export control provisions will apply to the transfer of ESSM In-service Support Phase Information:

9.1.8.1 Transfer of ESSM In-service Support Phase Information will be consistent with the furnishing Participant's applicable export control laws and regulations.

9.1.8.2 Unless otherwise restricted by duly authorized officials of the furnishing Participant at the time of transfer to another Participant, all export-controlled ESSM In-service Support Phase Information furnished by one Participant to another Participant may be retransferred to the other Participant(s) Contractors, subcontractors, Prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.4 and 6.5 of Section 6 (Contractual Provisions) of this MOU.

9.1.8.3 Export-controlled ESSM In-service Support Phase Information may be furnished by Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of one Participant's country to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of another Participant's country pursuant to this MOU, subject to the conditions established in licenses or other approvals

issued by the Government of the furnishing Participant in accordance with its applicable export control laws and regulations.

9.1.8.4 If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled ESSM In-service Support Phase Information as set out in subparagraph 9.1.8.2 of this Section, it will promptly inform the other Participants. If a restriction is then exercised and the affected Participant(s) objects, the NSPSC representative of the affected Participant(s) will promptly notify the other Participants' NSPSC representatives and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

9.1.8.5 Unless otherwise notified by the furnishing Participant, the specific export control provisions set out in Section 6 (Contractual Provisions) and subparagraphs 9.1.8.1 through 9.1.8.4 of this Section will not apply to transfers of information amongst non-U.S. DoD Participants where such exchanges do not include U.S. export-controlled ESSM In-service Support Phase Information. The provisions of this MOU that relate to the protection of ESSM In-service Support Phase Information, particularly Section 9 (Disclosure and Use of ESSM In-service Support Phase Information), Section 10 (Controlled Unclassified Information), Section 12 (Security), and Section 15 (Third Party Sales and Transfers), will otherwise continue to apply.

9.1.8.6 The Participants will use their best efforts to facilitate timely export authorizations related to the scope of work for the ESSM In-service Support Phase."

9: Change Section 12 (Security) as follows:

a. In paragraph 12.1, replace "NATO Document C-M (55) 15(Final) 3rd issue dated 15 October 1997" with "NATO Security Policy (C-M(2002)49) issued June 17, 2002" and insert the following before the period at the end of the paragraph:

“, and in accordance with any applicable security agreements or arrangements.”

b. Add the following at the end of paragraph 12.7:

“All Classified Information made available to a Participant’s personnel will be considered as Classified Information furnished to that Participant, unless otherwise restricted by the furnishing Participant. A Participant’s personnel will not have personal custody of Classified Information or Controlled Unclassified Information unless authorized by that Participant or the furnishing Participant, as appropriate, or approved by the NSPO PM. A Participant’s personnel will be granted access to such information in accordance with Section 10 (Controlled Unclassified Information) of this MOU, this Section, and the Project Security Instruction (PSI) during normal duty hours at the NSPO or when access is necessary to perform ESSM In-service Support Phase work.”

10. Change Section 19 (Withdrawal, Termination, Entry into Effect, and Duration) as follows:
- a. Insert the following above the current paragraph 19.1 and renumber paragraphs 19.1 through 19.4 as paragraphs 19.2 through 19.5:
“19.1 All activities of the Participants under this MOU will be carried out in accordance with their respective national laws and regulations, including their respective export control laws and regulations.”
 - b. Revise the renumbered paragraph 19.5 to read as follows:
“19.5 This MOU will enter into effect upon signature by all the Participants and will remain in effect through September 30, 2030, unless terminated under the provisions of paragraph 19.2 above. This MOU may be extended by the mutual written approval of the Participants.”
11. Add the following Annex B (Cooperative Project Personnel):

**“ANNEX B
COOPERATIVE PROJECT PERSONNEL**

1.0 Introduction

1.1 Cooperative Project Personnel (CPP) will be assigned to the NSPO in accordance with Section 4 (Management (Organization and Responsibility)) and Section 5 (Financial Provisions) of this MOU. CPP will be able to perform all the responsibilities assigned to them under this MOU. Commencement of assignments will be subject to requirements that may be imposed by the Host Participant or its Government regarding acceptance of CPP. The NSPO PM and the Parent Participant will mutually determine the length of assignment for the full-time CPP positions at the time of initial assignment. Since a National Deputy is not a full-time CPP, the assignment and the length of assignment will be determined by the Parent Participant.”

1.2 Full-time CPP will be assigned to the NSPO for ESSM In-service Support Phase work and will report to their designated NSPO supervisor regarding that work. The NSPO PM will be responsible for the creation of a document describing the duties of each CPP position. Full-time CPP will not act as liaison officers on behalf of the Parent Participant. Upon request from their respective NSPSC Member, full-time CPP may act from time to time on behalf of their Parent Participant if the NSPO PM so authorizes.

1.3 CPP will not be assigned to command positions or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant's Government.

2.0 Security

2.1 The NSPO PM will establish the level of security clearance required to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the Project Security Instruction (PSI). Access to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section 2 (Objectives), Section 3 (Scope of Work), Section 11 (Visits to Establishments), and Section 12 (Security) of this MOU and will be kept to the minimum required to accomplish the work assignments.

2.2 The Parent Participant will file visit requests for the CPP through prescribed channels in compliance with the Host Participant's procedures. As part of the visit request procedures, the Parent Participant will provide security assurances through their embassy or military attaché and specify the security clearances for the CPP being assigned.

2.3 The Host Participant and Parent Participant will use their best efforts to ensure that CPP assigned to the NSPO are aware of, and comply with, applicable laws and regulations as well as the requirements of Section 10 (Controlled Unclassified Information), Section 11 (Visits to Establishments), Section 12 (Security), and paragraph 19.4 of Section 19 (Withdrawal, Termination, Entry into Effect, and Duration) of this MOU and the provisions of the Project Security Instruction (PSI). Prior to commencing assigned duties, CPP will, as required by the Host Participant Government's laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

2.4 CPP will at all times be required to comply with the security and export control laws, regulations, and procedures of the Host Participant's Government. Any violation of security procedures by CPP during their assignment will be reported to the Parent Participant for appropriate action. CPP committing significant violations of security or export control laws, regulations, or procedures during their assignments will be withdrawn with a view toward appropriate administrative or disciplinary action by their Parent Participant.

2.5 CPP will not serve as a conduit between the Host Participant and Parent Participant for requests and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the NSPO PM and the Parent Participant. An exception is made for National Deputies performing additional duties related to NSPO assigned by the Parent Participant; they may transfer information to the Parent Participant in accordance with the applicable disclosure statements and security procedures set out in the PSI."

3.0 Administrative Matters

3.1 On arrival, CPP will be provided briefings arranged by the NSPO about applicable laws, orders, regulations, customs, and NSPO standard operating procedures and the need

to comply with them. CPP will also be provided information regarding entitlements, privileges, and obligations.

3.2 The tax treatment of income received by CPP from the Parent Participant will be determined by reference to the tax legislation of the Government of the Host Participant and the Government of the Parent Participant, subject to the terms of any double taxation agreement in force between the Government of the Host Participant and the Government of the Parent Participant, or by the terms of any applicable status of forces agreement.

3.3 CPP committing an offense under the laws of the Government of the Host Participant or Parent Participant may be withdrawn with a view toward further administrative or disciplinary action by the Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP, nor will the CPP exercise disciplinary powers over another Participant's personnel. In accordance with the laws and regulations of the Host Participant's Government, the Host Participant will assist the Parent Participant in carrying out investigations of offenses involving CPP.

3.4 The Participants whose countries are NATO member countries recognize the following: the military members and civilian employees of a Participant whose country is a NATO member country, assigned to duty with its Defense Department or Ministry for the purpose of working under this MOU, while present in the territory of another Participant whose country is a NATO member country, will, to the extent that they are so qualified, be members of a "force" and "civilian component", respectively, within the meaning of Article I of the NATO Status of Forces Agreement (NATO SOFA), which entered into force on June 19, 1951. Employees and agents of Contractors do not constitute a "civilian component", and the NATO SOFA will not apply to them. The Participants whose countries are NATO member countries consider the provisions of this MOU concerning military members and civilian employees to be consistent with the provisions of the NATO SOFA, and they recognize that the provisions of the NATO SOFA would govern if there were to be a conflict between the provisions of the NATO SOFA and the provisions of this MOU.

3.5 The Department of Defense of the United States of America and the Department of Defence of Australia invoke the Agreement between the Government of Australia and the Government of the United States of America concerning certain Mutual Defence Commitments, which entered into force on December 1, 1995, as amended (Chapeau Agreement). This MOU is subject to the Chapeau Agreement for the matters set out in the Chapeau Agreement."

SECTION III
ENTRY INTO EFFECT

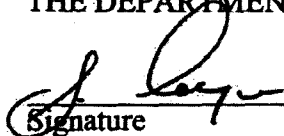
This Amendment One to the ESSM In-service Support MOU will enter into effect upon the date of the last signature below and will remain in effect for the same period as the MOU that it amends. Unless specifically amended herein, all other provisions of the MOU remain unchanged.

The foregoing represents the understandings reached among the Participants on the matters referred to herein.

SIGNED, in thirteen (13) original copies, in the English language, by authorized representatives:

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER FOR DEFENCE ON BEHALF OF
THE DEPARTMENT OF DEFENCE OF AUSTRALIA


Signature

Commodore S.C. Mayer CSC and Bar, RAN

Name

Director General Navy Capability Plans and Engagement

Title

10 Dec 13

Date

Canberra, Australia

Location

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF THE
KINGDOM OF BELGIUM

Signature

HAP Vincent

Name

NSPC MEMBER for BELGIUM

Title

Date

01 JUL 2013

Location

BRUSSELS (EUROPE)

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF NATIONAL DEFENCE OF
CANADA

Signature

Name

Title

Date

Location


Cmdre Marcel Halle

DGMEPM

26 Aug 13

Gatineau, QC

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF DENMARK

Signature



Name

Torik Nissen

Title

NSPSC Member for Denmark

Date

20 June 2013

Location

Washington, USA

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE FEDERAL MINISTRY OF DEFENCE OF
THE FEDERAL REPUBLIC OF GERMANY

Thomas Wardecki
Signature

Name Vizepräsident beim
Bundesamt für Ausrüstung,
Informationstechnik
und Nutzung der Bundeswehr

Title Dipl.-Ing. Thomas Wardecki

Date 08.05.2013

Location Robbenz

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTRY OF NATIONAL DEFENCE OF
THE HELLENIC REPUBLIC

Signature


Capt. Panagiotis Chatzakis H.N.

Name

HN65/C3

Title

25 June 2013

Date

Athens, Greece

Location

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF THE NETHERLANDS

Signature


A.G.J. VAN DE GEIJN

Name

DIRECTOR FOR PROCUREMENT

Title

MAY 28, 2013

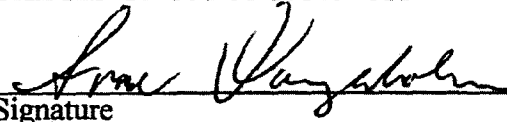
Date

THE HAGUE

Location

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF NORWAY


Signature

ARNE WANGSHOLM

Name
CAPTAIN, THE NORWEGIAN DEFENCE
LOGISTICS ORGANISATION

Title

2013-06-27

Date

BERGEN, NORWAY

Location



AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF PORTUGAL

Signature

Bento Manuel Domingues

Name

Capt. Bento Manuel Domingues

Title

NSPSC Member for Portugal

Date

24 June 2013

Location

Lisbon, Portugal

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF SPAIN

Signature

ANTONIO ESTARELLAS PEREYRA (31.404.024 P)

Name

JEFE UNIDAD DE CONTRATACION JAL

Title

08 MAY 2014

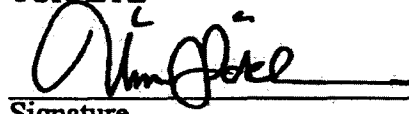
Date

MADRID (SPAIN)

Location

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE MINISTRY OF NATIONAL DEFENCE OF
TURKIYE



Signature

Ümit ÖZDEN

Name

Captain, Turkish Navy
Chief of Ordnance Dept.

Title

01 November 2013

Date

Ankara, Türkiye

Location

AMENDMENT ONE TO THE
MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
IN-SERVICE SUPPORT OF THE EVOLVED SEASPARROW MISSILE

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA

Signature

RADM J. A. Horn, Jr.

Name

PEO, Integrated Warfare Systems

Title

JUL 26 2013

Date

Washington, D. C. U.S.A.

Location